Supreme Court of the United States

October Term, 1960

No. 993

MOSES DANIEL COHAN, HENRY I. COHAN, and ESSIE M. COHAN,

Petitioners,

against

CITY OF NEW YORK,

Respondent.

REPLY BRIEF

Statement

The full issue on this writ is whether or not the order condemning the petitioners' property is final in respect to the constitutional rights of the petitioners.

Argument

Under the 14th Amendment of the Constitution, no one can seize a person's property, even for a second, without due process of law. The order of condemnation, unlike the order in *Catlin* v. *U. S.*, 324 U. S. 229, directs the immediate seizure of petitioner's property. The order states in part as follows:

> "An application having heretofore been made for an order to condemn * * * real property, where not heretofore acquired * * * that title shall vest in the City of New York upon the entry of this order. * * *
>
> ORDERED, that the said application be and the same is hereby granted." (fols. 14-18)

This is a final order in all respects and as the undisputed facts in the petition and records in the State Courts show conclusively that the petitioners' property is condemned and seized in order to be leased to others so that the said lessees should make profits therefrom, is in direct violation of the 14th Amendment of the Constitution.

In the petition in *U. S. v. Certain Lands*, 78 Federal Report (2d) 684, the Court said:

> "'The taking of one citizen's property for the purpose of improving it and selling it or leasing it to another, or for the purpose of reducing unemployment, is not' within the scope and power of the government."

This being an unconstitutional act, a proviso for compensation is beside the point. THERE CAN BE NO CONSTITUTIONAL QUESTION ON THE VALUE OF PROPERTY ILLEGALLY SEIZED.

The condemnation and seizure of petitioners' property was, therefore, a final act, *Carondelet Canal and Navigation Co. v. State of Louisiana*, 233 U. S. 362, where the Court said, by McKenna, J.: (Suit was brought by the State of Louisiana against Carondelet Canal and Navigation Company to obtain a waterway for the transportation of freight and merchandise.)

> "We are met, however, at the outset by a motion to dismiss on the ground that the judgment is not final.
>
> "The judgment disposes of and orders the delivery of practically all the property sued for: (1) The waterway in its entirety. * * *. It reserved property not appurtenant to it and an accounting * * * that is, all was decreed that it was the purpose of the suit to have decreed and which not only constituted its success, but which involved and disposed of the Federal right asserted by the canal company. The judgment, therefore, has a substantial finality. * * *

> "The prohibition is directed against the exertion of sovereignty which the citizens, unless protected by organic law would be impotent to resist, whether boldly declared in an explicit law or disguised in an ambiguous form. This case is an illustration. Here is property sought to be taken from the canal company * * *. The motion to dismiss must, therefore, be denied * * *."

It is, therefore, manifest that there is no "piece meal" litigation on the issue and as pointed out by this Court, the mere reservation of accounting for compensation does not destroy the finality of the order of condemnation and seizure and certainly in granting of the writ of certiorari by this Court restoring the plaintiff's property would be final in all respects and nothing further would be left to litigation.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted

SIDNEY S. LEVINE,
Attorney for Petitioners.